

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

)
)
)
)
)
)
)
)
)
)

Docket No. 1,007,928

ORDER

Respondent and its insurance carrier appealed the August 27, 2004 Award entered by Administrative Law Judge John D. Clark. The Board heard oral argument on November 16, 2004, in Wichita, Kansas.

APPEARANCES

Robert R. Lee of Wichita, Kansas, appeared for claimant. Janell Jenkins Foster of Wichita, Kansas, appeared for respondent and its insurance carrier (respondent).

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

Claimant developed a ganglion cyst on his left wrist and bilateral carpal tunnel syndrome due to the work that he was performing for respondent. The parties stipulated claimant sustained injury through December 12, 2002, which was the last day that claimant worked for respondent before undergoing the first of two wrist surgeries.

In the August 27, 2004 Award, Judge Clark determined claimant sustained a 13 percent whole body functional impairment, a 100 percent wage loss, a 23 percent task loss, and a 61.5 percent permanent partial general disability.

Respondent contends Judge Clark erred. Respondent argues claimant's task loss is only six percent. In addition, respondent argues the Judge should have imputed a post-injury wage of \$320 per week, which would create only a 56 percent wage loss, as claimant allegedly failed to make a good faith effort to find appropriate employment. Accordingly, respondent contends claimant's permanent partial general disability should be reduced from 61.5 percent to 31 percent.

Conversely, claimant contends the August 27, 2004 Award should be affirmed.

The only issue before the Board on this appeal is the nature and extent of claimant's injury and disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes the Award should be affirmed.

The parties agree claimant developed bilateral upper extremity injuries due to the work he performed for respondent as a bladder press operator. Claimant was diagnosed as having bilateral carpal tunnel syndrome. In December 2002, claimant underwent surgery on the left wrist to decompress the median nerve and remove a cyst followed two weeks later by surgery on the right wrist to decompress the median nerve.

In February 2003, claimant's surgeon, Dr. J. Mark Melhorn, released claimant to return to work without restrictions. Claimant returned to respondent's employ until October 23, 2003, when he was placed on medical leave. Respondent requested Dr. C. Reiff Brown to evaluate claimant to determine whether claimant should work as a bladder press operator. After respondent received Dr. Brown's opinion that claimant should no longer perform a number of the tasks comprising that job, on November 17, 2003, respondent wrote claimant notifying him that he would be terminated as of January 14, 2004, as the company did not have any openings in jobs that would accommodate claimant's permanent medical restrictions. Consequently, claimant was terminated.

Claimant last testified in this claim in early May 2004. At that time, claimant remained unemployed. At the May 2004 deposition, claimant introduced a list of the 55 job contacts that he had made since early January 2004, when he began his job search.

Three doctors testified regarding claimant's impairment. Dr. Melhorn rated claimant under the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (AMA Guides) (4th ed.) as having a 5.3 percent impairment to each upper extremity, which combined for either a 6.2 or 6.36 percent whole body impairment. Dr. Melhorn did not see claimant after February 20, 2003, and, therefore, did not see claimant after he returned to

work for respondent and experienced increased bilateral upper extremity symptoms and developed another cyst on his left wrist. According to Dr. Melhorn, claimant lost the ability to perform only two of the 34 former work tasks identified by respondent's vocational expert, Karen Crist Terrill.

Claimant saw Dr. C. Reiff Brown. The doctor first examined claimant in late August 2003 at Judge Clark's request. The doctor saw claimant again in early November 2003 at respondent's request for an opinion as to whether claimant should perform his regular job as a bladder press operator. Dr. Brown concluded claimant sustained a 10 percent functional impairment to each upper extremity due to the bilateral carpal tunnel syndrome and an additional two percent functional impairment to the left upper extremity due to the ganglion cyst, all of which combined for a 13 percent whole body functional impairment. Moreover, Dr. Brown concluded claimant's regular job as a bladder press operator violated the permanent medical restrictions the doctor recommended for claimant. Dr. Brown initially set forth his recommended work restrictions at page 2 of his August 26, 2003 letter to Judge Clark, as follows:

For practical purposes, I believe him [claimant] to be at a point of maximum medical benefit, although in my opinion, he needs more vigorous work restrictions. I believe his symptoms will decrease considerably is [sic] he discontinues the work activities that have originally precipitated his overuse syndromes. In my opinion, he should permanently avoid work with vibratory tools bilaterally. He should also limit the flexion/extension and grasp activities bilaterally, and should only occasionally do grasp manipulation, such as is necessary using pliers, scissors, and other hand tools requiring firm grasp and manipulation.¹

Dr. Brown reviewed the list of former work tasks prepared by claimant's vocational expert, Jerry D. Hardin, and considered the additional task of deburring metal. After excluding the duplicate tasks, the doctor concluded claimant had lost the ability to perform seven of the 29 work tasks, or approximately 24 percent, that claimant performed in the 15-year period before developing his bilateral upper extremity injuries.

The third doctor who testified in this claim, Dr. Pedro A. Murati, was hired by claimant's attorney to evaluate claimant for purposes of this claim. Dr. Murati examined claimant in May 2003 and rated claimant as having a 16 percent impairment to the right upper extremity and a 17 percent impairment to the left upper extremity, which combined for a 19 percent whole person impairment under the *AMA Guides* (4th ed.). Considering Mr. Hardin's task list and the additional task of deburring, Dr. Murati concluded claimant should no longer perform 14 of the 29 former work tasks, or approximately 48 percent.

¹ Brown Depo., Ex. 1 at 2.

Judge Clark determined claimant sustained a 13 percent whole person functional impairment, a 100 percent wage loss, a 23 percent task loss, and a 61.5 percent permanent partial general disability under K.S.A. 44-510e.

Claimant requests the Board to affirm those findings. The Board finds no persuasive reason to disturb the Judge's findings. Accordingly, the August 27, 2004 Award should be affirmed.

AWARD

WHEREFORE, the Board affirms the August 27, 2004 Award entered by Judge John D. Clark.

IT IS SO ORDERED.

Dated this ____ day of November 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Robert R. Lee, Attorney for Claimant
Janell Jenkins Foster, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director